

IN THE MATTER OF

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BEFORE THE

MARC COX,

*

COMMISSIONER OF

*

FINANCIAL REGULATION

Respondent

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OAH NO.: DLR-CFR-76A-09-34609

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PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge (the "ALJ") set forth in the Proposed Decision in the captioned case having been received, read and considered, it is, by the Commissioner of Financial Regulation (the "Commissioner") this 5th day of April, 2010,

A. **ORDERED** that the Findings of Fact in the recommended decision be, and hereby are, **ADOPTED**; and it is further

B. **ORDERED** that the Conclusions of Law in the Proposed Decision be, and hereby are, **ADOPTED**; and it is further

C. **ORDERED** that the Recommended Order be, and hereby is, **AMENDED** by adding the following provisions after the final paragraph on page 15 of the Proposed Decision:

ORDERED that Respondent shall, within ten (10) days from the date that this Order becomes a final decision of the Commissioner, send to the Commissioner in writing the name and address of the borrower (the "Borrower") to which Respondent is required to make a forfeiture payment in the amount of \$6,000 in connection with the Finder's Fee violation described on pages 11-12 of the Proposed Decision; and it is further

ORDERED that Respondent shall, within thirty (30) days from the date that this Order becomes a final decision of the Commissioner, mail to the Borrower the required forfeiture payment of \$6,000 via U.S. First Class Mail at the most recent address of the Borrower known to Respondent. If the mailing of the payment is returned as undeliverable by the U.S. Postal Service, Respondent shall promptly notify the Office of the Commissioner in writing for further instruction as to the means of the making of said payment. Upon the making of the required payment, the Respondent shall furnish evidence of having made the payment to the Office of the Commissioner within fifteen (15) days, which evidence shall consist of a copy of the front and back of the cancelled check for the payment; and it is further

ORDERED that Respondent shall pay to the Commissioner, by cashier's or certified check made payable to the "Commissioner of Financial Regulation," the amount of \$28,000 (constituting the \$27,000 civil penalties required under the Recommended Order and the \$1,000 civil penalty imposed pursuant to the Commissioner's June 9, 2008 Order) within fifteen (15) days from the date that this Order becomes a final decision of the Commissioner; and it is further

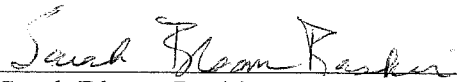
ORDERED that Respondent shall send all correspondence, notices and civil penalties to the Commissioner at the following address: Commissioner of Financial Regulation, 500 North Calvert Street, Baltimore, Maryland 21202, Attn: Jessica Wiener, Paralegal.

Pursuant to Maryland Code Ann., State Government § 10-220, the Commissioner sets forth the reasons for modifying the Recommended Order as follows: (i) the ALJ failed to identify the Borrower by name and address; (ii) it is necessary for the

Commissioner to receive verification from Respondent that he made the required forfeiture payment of \$6,000 to the Borrower; and (iii) it is necessary to provide Respondent with the address to which he must send to the Commissioner all correspondence, notices, and civil penalty payments.

Pursuant to COMAR 09.01.03.09, Respondent has the right to file exceptions to the Proposed Order and present arguments to the Commissioner. Respondent has twenty (20) days from the postmark date of this Proposed Order to file exceptions with the Commissioner. COMAR 09.01.03.09A(1). The date of filing exceptions with the Commissioner is the date of personal delivery to the Commissioner or the postmark date on mailed exceptions. COMAR 09.01.03.09A(2).

Unless written exceptions are filed within the twenty (20)-day period noted above, this Order shall be deemed to be the final decision of the Commissioner.



Sarah Bloom Raskin
Commissioner of Financial Regulation

MARYLAND COMMISSIONER OF

FINANCIAL REGULATION

v.

MARC COX,

LICENSEE

* BEFORE GERALDINE A. KLAUBER,

* AN ADMINISTRATIVE LAW JUDGE

* OF THE MARYLAND OFFICE OF

* ADMINISTRATIVE HEARINGS

* OAH CASE NO: DLR-CFR-76A-09-34609

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PROPOSED DECISION

STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
FINDINGS OF FACT
DISCUSSION
CONCLUSIONS OF LAW
RECOMMENDED ORDER

STATEMENT OF THE CASE

On February 20, 2009, the Maryland Commissioner of Financial Regulation (the CFR), Department of Labor, Licensing and Regulation (DLLR), issued a Summary Order to Cease and Desist to Marc A. Cox, Individually and doing business as United Financial Mortgage Corp. et al.¹ (Respondent). The CFR alleges that the Respondent has violated Title 11, Subtitle 5 of the Financial Institutions Article of the Annotated Code of Maryland (the Maryland Mortgage Lenders Act, or MMLA), Title 11, Subtitle 6 of the Financial Institutions Article of the Annotated Code of Maryland (the Maryland Mortgage Originators Law or MMOL), and Title 12, Subtitle 8 of the Commercial Law Article of the Annotated Code of Maryland. The CFR seeks action under Md. Code Ann., Fin. Inst. §§ 2-115(a), 11-517(c), 11-523(b) and 11-615(c) (2003 & supp. 2008).

¹ The CFR's Cease and Desist Order referred to the individually and doing business as United Financial Mortgage Corp. et al. Only Marc Cox requested the hearing and he is the only Respondent in this matter.

On February 27, 2009, the Respondent requested a hearing. On August 21, 2009, the CFR referred the matter to the Office of Administrative Hearings (OAH) for a hearing and delegated to the OAH the authority to issue proposed findings of fact and conclusions of law, and recommended order.

On December 1, 2009, I held a hearing at the OAH in Hunt Valley, Maryland on the Summary Order to Cease and Desist and proposed penalties. Assistant Attorney General Thomas Lawrie appeared on behalf of the CFR. The Respondent represented himself.

I heard this case pursuant to section 11-518² and 11-616 of the Financial Institutions Article, Annotated Code of Maryland (2003 & Supp. 2008). Procedure in this case is governed by the Administrative Procedure Act, Md. Code Ann., State Gov't. §§ 10-201 through 10-226 (2009), OAH's Rules of Procedure, Code of Maryland Regulations (COMAR) 28.02.01, and COMAR 09.01.03.

ISSUES

Did the Respondent fail to comply with a Final Order of the Commissioner dated June 9, 2008 by failing to pay a \$1,000.00 monetary penalty?

Did the Licensee violate Md. Code Ann., Comm. Law, §12-805 by collecting an unauthorized broker's fee (or finder's fee) from a consumer related to the closing of the consumer's residential mortgage loan in Maryland?

Did the Licensee engage in mortgage lending and mortgage origination activities without proper licensure in violation of Md. Code Ann., Fin Inst. §§ 11-504 and 11-604?

² All references to the Financial Institutions Article are to the 2003 volume and the 2008 Supplement. The MMLA was amended by Chapters 4, Acts 2009, effective July 1, 2009. The Summary Cease and Desist Order in this case was issued on February 20, 2009 and is based on violations that occurred prior to the amendments. The 2009 amendments are, therefore, inapplicable to this case. Accordingly, I am citing to the 2008 Supplement to the Financial Institutions Article even though the 2009 Supplement is available.

SUMMARY OF THE EVIDENCE

Exhibits

The CFR submitted the following documents, which I admitted into evidence:

- CFR 1 - Notice of Hearing to the Licensee, dated October 6, 2009
- CFR 2 - Delegation of Authority letter to OAH from Mark Kaufman, Deputy Commissioner, dated August 21, 2008
- CFR 3 - Summary Order to Cease and Desist, dated February 20, 2009
- CFR 4 - February 27, 2009 Hearing Request
- CFR 5 - June 9, 2008 Final Order of the CFR
- CFR 6 - Mortgage lender license of United Financial Mortgage Corporation, effective January 4, 2006
- CFR 7 - Spread Sheet prepared by Investigator Wink based on files from Respondent's business
- CFR 8 - April 12, 2008 Mortgage Brokerage Business Contract between Licensee and Brenda and Shayne Lambert
- CFR 9 - Uniform Residential Loan Application
- CFR 10 - Truth in Lending Disclosure Statement
- CFR 11 - Maryland Department of Assessment and Taxation information regarding United Financial Mortgage Corporation
- CFR 12 - Maryland Department of Assessment and Taxation information regarding Phoenix Financial & Mortgage Services, Inc.
- CFR 13 - Title 11, subtitle 5 of the Financial Institutions Article of the Maryland Annotated Code³
- CFR 14 - Title 11, subtitle 6 of the Financial Institutions Article of the Maryland Annotated Code⁴

The Respondent offered no documents into evidence.

³ The CFR submitted and during the course of the hearing recited from the 2009 Supplement of the Financial Institutions Article although the Cease and Desist Order and the law in effect at the time of the violations is contained in the 2008 Supplement.

⁴ The CFR submitted and during the course of the hearing recited from the 2009 Supplement of the Financial Institutions Article although the Cease and Desist Order and the law in effect at the time of the violations is contained in the 2008 Supplement.

Testimony

Calvin Wink, Jr., Certified Investigator for the CFR, testified on behalf of the CFR.

The Licensee testified on his own behalf.

FINDINGS OF FACT

Having considered the testimony and exhibits presented, I find the following facts by a preponderance of the evidence:

1. On April 16, 1996, United Financial Mortgage Corporation (UFMC) was registered with the Maryland State Department of Assessment and Taxation (SDAT) with the Respondent listed as the Resident Agent. (CFR #11, p. 40)
2. On August 15, 2005, the Respondent changed the name of UFMC to UFMC 1 (CFR #11)
3. On January 4, 2006, UFMC was issued a mortgage lender's license. (CFR #6)
4. On April 13, 2007, UFMC 1 amended its Articles of Incorporation and Charter to reflect that the Respondent was the 100% owner. (CFR #11)
5. On March 17, 2008, the CFR charged the Respondent with violating Financial Institutions Article §§11-517(a)(4) and (5) in connection with negotiating checks on a closed bank account.
6. UFMC's lender's mortgage lender license expired on March 25, 2008. (CFR #6)
7. Subsequent to a contested case hearing held on May 15, 2008, related to allegations that the Respondent had violated Financial Institutions Article §11-517(a)(4) and (5) by engaging in illegal and dishonest activity through negotiating multiple checks on a closed account, by Order dated June 9, 2008, the Maryland Commissioner of Financial Regulation revoked the UFMC's mortgage lender's license and Respondent was ordered to pay a civil penalty of \$1,000.00. (CFR #5)
8. The Respondent never paid the \$1,000.00 civil penalty.

9. On June 11, 2008, the Respondent, as resident agent, filed Articles of Incorporation and registered Phoenix Financial & Mortgage Services, Inc. (Phoenix) with SDAT. (CFR # 12)
10. The corporation was formed for the purpose of mortgage lending and brokerage services.
11. The Respondent managed and operated UPMC and Phoenix at a business office located at 819 E. Baltimore Street, Baltimore, Maryland.
12. No employees of UPMC, UPMC 1 or Phoenix are licensed to originate loans for these companies.
13. No employees of UPMC or Phoenix are licensed as mortgage brokers or mortgage lenders.
14. On April 12, 2008, UPMC entered into a Mortgage Brokerage Business Contract with Brenda Lambert and Shayne Lambert (the Lamberts). (CFR #8 and 9)
15. The Respondent was listed as the mortgage originator on the Uniform Residential Loan Application filed by the Lamberts. (CFR#9)
16. On July 11, 2008, the Articles of Incorporation for Phoenix were voided for non-payment. (CFR #12)
17. Subsequent to March 25, 2008, when the mortgage lender license for UPMC had expired, the Respondent acted as a loan originator on mortgage loan applications using the mortgage lender name of UPMC.

DISCUSSION

The CFR conducted an investigation into the business activities of the Respondent and, as a result of the investigation, the CFR has alleged that the Respondent violated specific provisions of the MMLA, MMOL, and the Commercial Law Article. Based on the alleged violations, the CFR seeks a final order that requires the Respondent to immediately cease and desist from originating, brokering, lending, mitigating or engaging in other activities involving Maryland mortgage loans or otherwise pertaining to the mortgage industry in Maryland.

The CFR, as the moving party on the charges, has the burden of proof, by a preponderance of the evidence, to demonstrate that the Respondent violated the statutory and regulatory sections at issue and, as a result, the Commissioner may issue a final cease and desist order against the Respondent and impose a civil penalty. *See, e.g., Md. Code Ann., State Gov't Art., § 10-217 (2004); Comm'r of Labor and Indus. v. Bethlehem Steel Corp.*, 344 Md. 17 (1996).

A. Violations of the MMLA and MMOL

Section 11-504 of the MMLA sets forth the basic premise that a person may not act as a mortgage lender⁵ unless the person is a licensee or a person exempted from licensing.

Section 11-502 exempts a number of categories of persons, but none of those exemptions apply in this case. Section 11-501 of the MMLA sets forth the following relevant definitions:

- (e) License. - "License" means a license issued by the Commissioner under this subtitle to authorize a person⁶ to engage in the business as a mortgage lender.
- (f) Licensee. - "Licensee" means a person who is licensed under the Maryland Mortgage Lender Law.
- ...
- (h) Mortgage broker.- "Mortgage broker" means a person who:
 - (1) For a fee or other valuable consideration, whether received directly or indirectly, aids or assists a borrower in obtaining a mortgage loan; and
 - (2) Is not named as a lender in the agreement, note, deed of trust, or other evidence of indebtedness.
- (i) Mortgage lender.-
 - (1) "Mortgage lender" means any person who:
 - (i) Is a mortgage broker;
 - (j) Makes a mortgage loan to any person; or
 - (iii)
 - 1. Engages in whole or in part in the business of servicing mortgage loans or others; or
 - 2. Collects or otherwise receives payments on mortgage loans directly from borrowers for distribution to any other person.

⁵ Under Maryland law both mortgage lenders and mortgage brokers have the same license, referred to in the statute as a mortgage lender license.

⁶ Financial Institutions article § 11-501 defines "person" and the definition includes a corporation.

(j) Mortgage lending business.-

(1) "Mortgage lending business" means the activities set forth in the definition of mortgage lender in subsection (i) of this section which requires that person to be licensed under this subtitle.

(2) "Mortgage lending business" includes the making or procuring of mortgage loans secured by residential real property located outside Maryland.

Beginning January 1, 2007, an individual was precluded from acting as a mortgage originator unless the individual was a licensee or exempt from licensing under the subtitle or subtitle 5 of the title. Md. Code Ann., Fin. Inst. §11-604 (Supp. 2008). The MMOL defines a mortgage originator as follows:

"Mortgage originator" means an individual who:

- (i) Is an employee of a mortgage lender that:
 - 1. Is a mortgage broker as defined in § 11-501(i) of this title; or
 - 2. Has or will have a net branch office at or out of which the individual works or will work;
- (ii) Directly contacts prospective borrowers for the purpose of negotiating with or advising the prospective borrowers regarding mortgage loan terms and availability;
- (iii) Receives from the mortgage lender compensation that is calculated:
 - 1. As a percentage of the principal amount of mortgage loans originated by the individual; or
 - 2. As a percentage of the interest, fees, and charges received by the mortgage lender that result from mortgage loan transactions originated by the individual;and
- (iv) Is authorized to accept a loan application on behalf of the mortgage lender.

Md. Code Ann., Fin. Inst. § 11-601 (Supp. 2008).

CFR contends that the Respondent engaged in unlicensed mortgage originating activities on a regular and continuing basis after the revocation of the mortgage lending license. It is undisputed that on April 16, 1996, UPMC was registered with SDAT with the Respondent listed as the Resident Agent and on January 4, 2006, UPMC was issued a mortgage lender's license. A hearing was held on May 15, 2008 before the Maryland Deputy Commissioner of Financial Regulation on charges that the Respondent had violated Financial Institutions article section 11-517(a)(4) and (5) in connection with negotiating checks on the Respondent's closed bank

account. On June 9, 2008, the CFR issued a Final Order that, pursuant to section 11-517(a)(4) and (5), revoked the Respondent's mortgage lender's license and imposed a civil penalty of \$1,000.00 to be paid to the CFR within thirty days from the date of the Order. Prior to the June 9, 2008 Order, UPMC's mortgage lender license had expired on March 25, 2008. The violations in question occurred either after the March expiration or the June revocation of the Respondent's license.

The CFR commenced an investigation into the Respondent's activities after it had received a complaint that the Respondent continued to conduct a mortgage lending business out of 819 E. Baltimore Street, Baltimore, Maryland after the revocation of UPMC's license. Calvin Wink, Jr., the supervisory investigator for the Enforcement Unit of the CFR, conducted the investigation into the allegations and testified at the hearing on behalf of the CFR. Mr. Wink testified that during the course of his investigation and pursuant to a subpoena, he inspected boxes of business documents maintained at the Respondent's business address. He found in these boxes numerous loan package documents that indicated that the Respondent had been conducting mortgage lending business out of that address subsequent to the expiration or revocation of the UPMC's mortgage lender license. The origination of the loans occurred for several different companies, including Phoenix Financial & Mortgage Services, Inc. (Phoenix).

According to Mr. Wink, during the course of his investigation he learned through the SDAT that just two days after the June 9, 2008 Order revoking the Respondent's license, the Respondent, as resident agent, filed Articles of Incorporation and registered Phoenix with SDAT. The stated purpose of the corporation was mortgage lending and brokerage services. One month after Phoenix's Articles of Incorporation, the Articles were voided for non-payment.

Based on his review of the documents, Mr. Wink determined that loan applications were originated through UPMC after the March 25, 2008 expiration or June 9, 2008 revocation of the

license or through other company names. According to Mr. Wink, none of the other companies listed on the loans had ever been licensed in the State of Maryland as mortgage lenders. Based upon his review of the Respondent's documents, Mr. Wink created a spread sheet that reflected the Borrowers' names, addresses, State, the name of the Lender and the application date. In addition, the CFR introduced one representative loan package for at loan transaction involving UPMC and the Lamberts. The package included the Mortgage Brokerage Business Contract (Contract), the Uniform Residential Loan Application (Loan Application) and the Truth and Lending Disclosure Statement (Disclosure Statement). The Contract dated April 12, 2007 named UPMC as the mortgage broker; the Loan Application named the Respondent as the mortgage originator and the Disclosure Statement prepared on April 7, 2008 indicated that it was prepared by UPMC.

The spreadsheet prepared by Mr. Wink reflects 38 additional loan packages that listed UPMC as the mortgage lender after its license had expired or by other companies that were never licensed as mortgage lenders. Some of the transactions were for properties located out of Maryland. Mr. Wink testified that 25 of the loans were for property located in Maryland and the Respondent was named as the mortgage originator. The Respondent was never licensed as a loan originator and after UPMC's license expired on March 25, 2008, the Respondent was no longer authorized to originate loans under that corporation.

The Respondent's arguments in response to the CFR's evidence regarding his engagement in unlicensed mortgage originating were unconvincing. According to the Respondent, after UPMC's license was revoked he did not perform any mortgage lending practices through that company. According to the Respondent, Phoenix was incorporated for the purpose of engaging in providing mortgage lending and brokerage services for commercial real estate loans and not residential, as he did not need to have a lender or broker's license for

commercial loans. The Respondent offered no corroborating evidence to support his assertion. The stated purpose of Phoenix on the Articles of Incorporation filed with SDAT was “mortgage lending and brokering services.” The Articles mentioned nothing about commercial lending services. The Respondent offered no loan documents reflecting that Phoenix had ever engaged in a commercial loan.

Regarding those loans involving UFMC, the Respondent denied engaging in any mortgage lending business after the license expired. He contended that UFMC’s name appeared on the applications due to a computer software glitch and “incompetence.” He explained that the template on the loan origination software used by another corporate entity continued to reflect UFMC’s name after UFMC was no longer conducting business. He also contended that the presence of UFMC’s name on loan documents may have had to do with UFMC having had an account with the credit bureau Equifax. I found neither of these arguments convincing. There were not just one or two loan packets reflecting UFMC as the broker, but over thirty. I do not believe that a software glitch would go undetected on so many documents.

Regarding the engagement of unlicensed mortgage lending under different corporate names, the Respondent seemed to argue that these entities, such as New World and Challenge, were operating as a net branch of those parent corporations and, therefore, the lending activities were legal. The Respondent’s argument was not supported by any evidence. The Financial Institutions Article § 11-601(l) defines net branch office as follows:

(1) “Net branch office” means a branch office of a mortgage lender that is separately licensed under Subtitle 5 of this title if:

- (j) As a condition of establishing the net branch, the mortgage lender requires the mortgage originator who works in or out of the branch office, or a person controlled by the mortgage originator, to pay an application, licensing, franchise, start-up, or other fee to the mortgage lender or directly to the Commissioner;

Mr. Wink confirmed that with a net branch each location must have its own lender’s license and an originator of the net branch must also be licensed in order to perform services for

the net branch. He further testified that no corporation doing business at the Respondent's business address had a mortgage broker's license and no employee at the location had an originator's license.

B. Finder's Fee Violation

The CFR charges that the Respondent violated the MMLA and Commercial Law Article section 12-805 by taking \$2,000.00 in an unauthorized finder's fee from a consumer. These allegations find their roots in the Commercial Law article rather than in the Financial Institutions Article. The term finder's fee is defined as "any compensation or commission directly or indirectly imposed by a broker and paid by or on behalf of the borrower for the broker's services in procuring, arranging, or otherwise assisting a borrower in obtaining a loan or advance of money." Md. Code Ann., Comm. Law § 12-801(c) (2005). Finder's fees are authorized and limited by Commercial Law Article section 12-804 (2005). A finder's fee "may not be charged unless it is pursuant to a written agreement between the mortgage broker and the borrower which is separate and distinct from any other documents." Md. Code Ann., Comm. Law. §12-805(d)(1) (Supp. 2008). A copy of the agreement, dated and signed by each party, must be provided to the borrower by the mortgage broker within ten business days after the date the loan application is completed. Md. Code Ann., Comm. Law. §12-805(d)(3) (Supp. 2008). Any mortgage broker who violates any provision of the subtitle "shall forfeit to the borrower" the greater of three times the amount of the finder's fee collected or \$500.00. Md. Code Ann., Comm. Law. §12-807 (2005).

Mr. Wink testified that in the course of his investigation he further learned that a broker fee of \$2,000.00 had been paid to Residential Home Loan Centers, LLC, and the receipt was signed by the Respondent, of Phoenix Financial, for a referral. Mr. Wink spoke to the owner of Residential, who confirmed that the Respondent had applied to work with them, but that had never come to fruition, and the Respondent was not authorized to broker or originate on their

behalf. Although Mr. Wink did not provide the name of the consumer, any documents relating to the transaction, or even a date, the Respondent did not deny the allegation. In fact, the Respondent admitted that he charged a referral fee for referring a customer to Residential to obtain a loan. He further admitted that the fee was arranged pursuant to a verbal agreement and there were no documents involved regarding this transaction. Thus, because the Respondent was acting as a mortgage broker through Phoenix and charged a finder's fee without a written agreement with the borrower, the Respondent violated Section 12-805 of the Commercial Law Article and is subject to the forfeiture of that fee as provided for in section 12-807.

C. Violation of Final Order of the CFR

On May 15, 2008, a hearing was held regarding the Respondent's violations of Financial Institutions Article, sections 11-517(a) (4) and (5) by engaging in illegal and dishonest activity through negotiating multiple checks on a closed bank account. On June 9, 2008, the Commissioner issued a final order revoking the Respondent's mortgage lender license and requiring the Respondent to pay a \$1,000.00 civil penalty within 30 days of the Order.

The Respondent admitted that he did not pay the \$1,000.00 civil penalty. According to the Respondent, his failure to pay the fine was "an oversight."

D. The Sanctions

At the conclusion of the hearing, the CFR indicated that it could have sought action against the Respondent on numerous violations of the law, but for purposes of simplicity, was requesting that sanctions be imposed for the Respondent's unlicensed loan origination activities, violation of the CFR June 9, 2008 final order, and the unlawful collection of a finder's fee. The CFR is specifically seeking a final cease and desist order and civil penalties. The CFR is entitled to a cease and desist order pursuant to sections 2-115 and 11-615(c) of the Financial Institutions Article. Section 11-615 (c) provides:

(1) The Commissioner may enforce the provisions of this subtitle, regulations adopted under this subtitle, and the applicable provisions of the Title 12 of the Commercial Law Article by:

(i) Issuing an order:

1. To cease and desist from the violation and any further similar violations; and
2. requiring the violator to take affirmative action to correct the violation, including the restitution of money or property to any person aggrieved by the violation; and
3. Imposing a civil penalty not exceeding \$1,000 for each violation.

In determining the amount of financial penalty to be imposed under subsection (c) of this section, the Commissioner shall consider:

- (1) The seriousness of the violation;
- (2) The good faith of the violator;
- (3) The violator's history of previous violations;
- (4) The deleterious effect of the violation on the public and mortgage industry;
- (5) The assets of the violator; and
- (6) Any other factors relevant to the determination of the financial penalty.

Md. Code Ann., Fin. Inst. § 11-615(e) (Supp. 2008).

Section 2-115 provides, in relevant part:

(b) *Other authorized actions for violations.*- When the Commissioner determines after notice and a hearing, unless the right to a hearing has been waived, that a person has engaged in an act or practice constituting a violation of law, regulation, rule or order over which the Commission has jurisdiction, the Commissioner may in the Commissioner's discretion and in addition to taking any other action authorized by law:

- (1) Issue a final cease and desist order against the person;
- (2) Suspend or revoke the license of the person;
- (3) Issue a penalty order against the person imposing a civil penalty up to the maximum amount of \$1,000 for a first violation and a maximum amount of \$5,000 for each subsequent violation; or
- (4) Take any combination of the actions specified in this subsection.⁷

Md. Code Ann., Fin. Inst. § 2-115 (Supp. 2008).

The CFR is seeking a penalty for the 25 occasions connected with Maryland properties that the Respondent violated the law by acting as a mortgage originator without a license and for collecting the finder's fee, in violation of section 11-615 of the Financial Institutions Article. The

⁷ Md. Code Ann., Fin. Inst. § 2-115(c) lists the same factors as those contained in 11-615(c) to consider in determining the amount of financial penalty to be imposed.

Respondent's actions in these incidents reflect poorly on the mortgage industry and have a deleterious effect upon the public who rely upon the integrity of a licensee who handles their application for a loan. I agree that a penalty should be imposed for each of the 25 violations of the MMOL and the one violation of the Commercial Law Article for a total of \$26,000.00.⁸

Additionally, the Respondent has demonstrated a lack of good faith by continuing to violate provisions of the Financial Institutions Article after already having been subject to sanctioning by the CFR. The Respondent simply ignored the prior civil penalty imposed by the CFR. The Respondent should be ordered to immediately comply with the previous order and pay the \$1,000.00 penalty. In addition, in accordance with section 2-115, the Respondent should also be assessed a \$1,000.00 penalty for failing to pay the civil penalty previous imposed pursuant to the CFR's order of June 9, 2008.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Licensee violated Md. Code Ann., Fin. Inst. §§ 11-610 and 11-604 (2003 & Supp. 2008) by engaging in unlicensed mortgage originating activities on 25 loans for properties located in the State.

I conclude as a matter of law that the Licensee violated Md. Code Ann., Comm. Law § 12-805 (2005) by accepting a finder's fee without a written agreement.

I conclude as a matter of law that the Licensee violated an Order of the CFR by failing to pay a civil penalty imposed by a June 9, 2008 for prior violations of the Financial Institutions Article.

I conclude as a matter of law that the Licensee is subject to civil penalties and a final Cease and Desist Order regarding all mortgage lending and originating practices for its violations

⁸ Pursuant to section 11-615 (c) of the Financial Institutions Article, in effect at the time of the issuance of the Cease and Desist Order, the maximum penalty was \$1,000.00.

of the Financial Institutions and Commercial Law Articles. Md. Code Ann., Fin. Inst. § 11-615 (Supp. 2008) and Md. Code Ann., Fin. Inst. §2-115 (2003).

And finally, I conclude as a matter of law that the Licensee violated Md. Code Ann., §§12-804 and 12-805 (2005 & Supp. 2008) and as a consequence shall be required to forfeit three times the amount of the finder's fees impermissibly collected to the borrower as provided in Md. Code Ann., Comm. Law § 12-807 (2005).

RECOMMENDED ORDER

I RECOMMEND that the CFR:

Enter a final Order that the Licensee cease and desist from engaging in the mortgage lending and originating business;

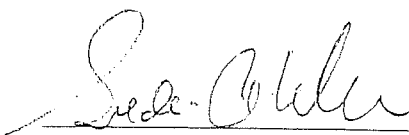
ORDER that the Licensee immediately pay the \$1,000.00 civil penalty imposed pursuant to the CFR's June 9, 2008 Order;

ORDER that the Licensee pay to the Maryland Commissioner of Financial Regulation a civil penalty of \$27,000.00 calculated as \$25,000.00 for acting as an unlicensed mortgage originator on 25 loan applications, plus \$1,000.00 for failing to pay the previously imposed civil penalty, plus \$1,000.00 for charging a finder's fee without a written agreement with the borrower;

ORDER that the Respondent forfeit \$6,000.00 to the borrower, which is three times the \$2,000.00 finder's fees impermissibly collected by the Respondent;

ORDER that the records and publications of the CFR reflect this decision.

February 12, 2010
Date Decision Mailed



Geraldine A. Klauber
Administrative Law Judge